

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RICK NEEL)	
Claimant)	
VS.)	
)	Docket No. 173,248
CONSUMERS MARKETS, INC.)	
Respondent)	
AND)	
)	
CIGNA PROPERTY & CASUALTY INSURANCE)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent requests review of the Order entered by Administrative Law Judge John D. Clark on June 27, 1996. The Appeals Board heard oral argument on November 14, 1996.

APPEARANCES

Respondent and its insurance carrier appeared by their attorney, Gary R. Terrill of Overland Park, Kansas. The Kansas Workers Compensation Fund (Fund) appeared by its attorney, Timothy J. Riling of Lawrence, Kansas .

RECORD AND STIPULATIONS

The record in this case consists of the transcript of a hearing held on June 26, 1996, and exhibits offered and introduced at that hearing. Affidavits attached to the brief of the Fund have not been considered as part of the record. The Appeals Board does not,

without the stipulation of all parties, consider evidence not presented before the Administrative Law Judge.

ISSUES

The parties entered into a settlement agreement in this case at a hearing held on June 28, 1994. As a part of that settlement, the Fund stipulated and agreed to pay 75 percent of all compensation paid in this claim. The Fund's obligation amounted to \$13,231.41. The parties agree that after the settlement the Fund forwarded a check in the total amount owed to respondent's counsel. Respondent's counsel in turn forwarded the check to respondent's insurance carrier, CIGNA. Respondent has offered into evidence the uncontradicted affidavit of a representative of CIGNA indicating CIGNA did not receive the check.

The current dispute arises because after a one-year lapse the Fund canceled the check and contends that by operation of K.S.A. 46-921 the funds must now be paid from the Canceled Warrants Payment Fund with a 10 percent deduction taken by that fund. When the Fund attempted to satisfy its obligation by payment of an amount 10 percent less than the original settlement agreement, respondent asked for and obtained a hearing before the Administrative Law Judge. The Administrative Law Judge entered an Order stating that the Workers Compensation Fund is to reimburse the respondent in the amount of \$11,908.26, that is 10 percent less than the original agreement. Respondent appeals from that Order by the Administrative Law Judge stating that the issue is whether the Administrative Law Judge erred in ordering the Fund to reimburse the respondent in an amount less than the 100 percent of the Fund's obligation as established by the Award against the Fund.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board concludes neither the Administrative Law Judge nor this Board has jurisdiction to consider or determine the issues raised in this appeal.

An Award was entered in this case by approval of the settlement entered on June 28, 1994. The Award so entered called for the Workers Compensation Fund to pay respondent 75 percent of all compensation, medical expenses, and court costs paid on the claim. The Fund's obligation amounted to \$13,231.41. The parties agreed that the Fund forwarded a check in the full amount to respondent's counsel and the check was in turn forwarded to respondent's insurance carrier. Respondent's insurance carrier indicates it did not receive the check. After one year the warrant was canceled pursuant to K.S.A. 10-811. The Fund contends that K.S.A. 10-812 requires that funds from the canceled warrant be transferred into the Canceled Warrants Payment Fund. The Fund further contends that once those funds are transferred to the Canceled Warrants Payment Fund a mandatory

10 percent is taken from that amount, presumably as a type of handling or administration fee, before a check is reissued.

It is the Appeals Board's view that neither the Administrative Law Judge nor the Appeals Board has jurisdiction to determine the issues raised. The Workers Compensation administrative court system is not the proper forum for enforcement of the Award. The Award in this case was for the amount of \$13,231.41. The jurisdiction of the Workers Compensation system is limited to determination of the appropriate amount of that Award. Whether other statutes override or alter that Award so that a lesser amount may be determined to satisfy the award is an issue to be determined in another jurisdiction. The Award is in the amount of \$13,231.41. To the extent the Order by the Administrative Law Judge suggests that the Award is for a lesser amount, it is, hereby, reversed. The Appeals Board makes no other judgment or determination beyond the fact that the Award was and is for \$13,231.41.

WHEREFORE, the Appeals Board finds that the Order of Administrative Law Judge John D. Clark dated June 27, 1996, should be, and the same is hereby, reversed. The Appeals Board also finds that it is otherwise without jurisdiction to determine the issues raised in this appeal.

IT IS SO ORDERED.

Dated this ____ day of December 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gary R. Terrill, Overland Park, KS
Timothy J. Riling, Lawrence, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director